THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 18455 of 1999

O r d e r:

By this writ petition, filed under article 226 of the Constitution of India, the petitioners seeks a Writ of Mandamus directing the respondents to implement the judgment dated 27.06.1989, passed by the Court of the District Munsif, Palakonda, allowing the suit in O.S. No. 226 of 1988, filed by the petitioner seeking declaration of his date of birth as 28.04.1959 and not 28.04.1958 as entered in the Secondary School Certificate.

The petitioner claiming that he was born on 28.04.1959, as evidenced by the extract of the Birth Register of the Gram Panchayat, and not on 28.04.1958, as recorded in the Secondary School Certificate, after completing his graduation and degree in Law, filed suit in O.S. No. 226 of 1998 on the file of the District Munsif, Palakonda, seeking declaration of his date of birth as 28.04.1959, by making the respondents herein as party-defendants. The respondents though contested the suit by filing written statement, did not cross-examine the petitioner. Ultimately, the District Munsif, Palakonda, vide his judgment dated 27.06.1989, decreed the suit as prayed for. Pursuant thereto, the petitioner claims to have made representation to the Additional Joint Secretary of Government Examinations seeking correction of his date of birth as 28.04.1959. But on his directions, he made representation dated 20.07.1998 to the Director of School Education, who vide his proceedings dated 27.08.1998, refused to correct the date of birth on the ground that the judgment and decree obtained by the petitioner is merely declaratory in nature. Aggrieved thereby, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for School Education for the respondents.

The learned counsel for the petitioner submits that the date of birth of the petitioner as evidenced by the extract of the Birth Register of the Gram Panchayat is 28.04.1958 and not 28.04.1959, as recorded in the Secondary School Certificate. The petitioner obtained a declaratory judgment and decree dated 27.06.1989 in O.S.

No. 226 of 1988 against the respondents from the Court of the District Munsif, Palakonda, declaring that his date of birth is 28.04.1958 and not 28.04.1959. The said judgment and decree has attained finality for the respondents did not prefer any appeal against the same. The respondents having been party to the suit, the judgment and decree made therein is binding on them, and as such, they could not have refused to change the date of birth of the petitioner, on the ground that the judgment is merely declaratory and not directory, and more so when the said judgment has attained finality. He thus prayed that appropriate directions be given to the respondents to correct the date of birth of the petitioner as declared in the judgment.

I am unable to accept the submission of the learned counsel for the petitioner.

Be it noted that the Government issued detailed procedure for change/alteration of date of birth of individuals in G.O. Ms.
No. 1263/Ed., dated 06.05.1961. Thereafter, the Government issued G.O. Ms. No. 898/Edn., dated 29.08.1977 stating that no application for the correction of date of birth in completed Secondary School Leaving Certificate, Higher Secondary Certificate or Higher Secondary (Multipurpose) shall be entertained after a period of three years from the date of completion of the said course. As the procedure contemplated under the G.O. issued in 1961 was time consuming, in that it was taking eight to ten years, the Government issued G.O. Ms. No. 1130, Education (I) Department, dated 28.09.1981, incorporating the suggestion of the Director of School Education, and directing as follows:

> The concerned candidates may submit their applications for alteration of date of birth in the certificates with all required documents through Head Master of the School where he last studied to the concerned Tahsildar, who in turn after conducting enquiry send the same to the Collector. The Collector shall send it to the Director of School Education with his specific remarks/recommendations. The Director of School Education or Government according to vested powers, will examine the admissibility of the case in respect of age and shall finalize it.

Since the petitioner passed S.S.C. in July 1973, he should have sought correction of date of birth by following the procedure contemplated in the 1961 G.O., which he did not do for the reason that he came to know of the wrong entry of his date of birth later after he completed his graduation and Bachelors of Law. At any rate, since 1977 G.O. barred entertaining of application for correction of date of birth from the date of passing of S.S.C., after three years, he filed suit O.S. No. 226 of 1998 on the file of the District Munsif, Palakonda, and obtained a decree declaring

his date of birth as 28.04.1959 and not 28.04.1958. The petitioner, admittedly, made the respondents herein as party-defendants to the suit.

Since it is the contention of the petitioner that the respondents being a party to the judgment and decree passed in the suit, which has attained finality, irrespective of whether there is a positive direction to them, it is binding on them, and they cannot refuse to change the date of birth on the basis of the decree obtained by him, it may be noticed whether the said decree can be directed to be implemented by a Mandamus, issued under article 226 of the Constitution of India.

The law is well settled that a Mandamus under article 226 of the Constitution of India, will never be issued to enforce the general law of the land which may be enforced by action; for instance, where the applicant has the ordinary legal remedy of an execution.

The alteration/correction of date of birth is also governed by the Rules framed by the Government in terms of article 309 of the Constitution of India, known as "A.P. Public Employment (Recording and Alteration of Date or Birth) Rules 1984".

Rule 4 of the said Rules states that "the date of birth determined under this rule shall be entered in the service record of the employee concerned duly attested by the Head of the Office or the officer who maintains the service records and the date of birth so entered shall be final and binding and the Government employee shall be estopped from disputing the correctness of such date of birth".

The aforementioned Rules were amended in 1993 by issuing G.O. Ms. No. 383, dated 16.11.1993, and under the said amendment, Rule 2A was inserted, which barred the consideration of the decree passed by the Civil Courts for change of date of birth. The inserted Rule 2A reads thus:

> In any proceedings before the Government or any Court, Tribunal or other authority for the alteration of date of birth in the service records, the decree of a Civil Court in regard to alteration of the date of birth in the School or the University records or the contents in the judgment leading to such decree, or the effect of its implementation shall not be taken into consideration in derogation to these rules and **it is hereby declared that these rules shall have effect notwithstanding anything contained in any judgment, decree or order of a Civil Court in regard to the alteration of date of birth in the School or the University records whether or not the Government is a party to such proceedings**.

(emphasis supplied)

From the above, it is very clear that in with respect to correction of change of date of

birth, the Rules have been given primacy, and any decree or order of the Civil Court in relation to change of date of birth, shall not be taken into consideration for implementation in derogation of the said Rules, irrespective of whether the Government is a party to the decree or not.

A Full Bench of this Court in **G. Krishna Mohan Rao v. Registrar, A.P. Administrative Tribunal, Hyderabad** elaborately considered the law governing the correction of date of birth, and in particular the effect of Rule 2A of the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, and held that even if an employee is in possession of a decree declaring his date of birth to be different than what is recorded in his service register, that decree cannot be binding on employer even if the employer is a party to the suit in view of the bar created under Rule 2A.

In view of the Full Bench judgment and Rule 2A of the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, which barred the consideration of the decree passed by the Civil Courts with respect to correction of date of birth, irrespective of whether Government is a party to the suit or not, no direction as prayed for by the petitioner in the writ petition directing the respondents to implement the judgment and decree dated 27.06.1989, passed by the District Munsiff, Palakonda, in
O.S. No. 226 of 1998, declaring the date of birth of the petitioner as 28.04.1959 and not as 28.04.1958, can be granted, even if there be a positive direction by the Civil Court to the Government or any other defendant therein to change the date of birth.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed.

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N.V. RAMANA, J.

Date: 23rd December, 2005.

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